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REMARKS

Introduction

Claims 4-10 remain in the application, of which claims 4-7 are in independent form.

Objections to the Drawings

FIG. 1 has been objected to, the Office action contending that FIG. 1 does not show that the timer is coupled to the renderer.

As described in the Amendment dated June 1, 2006, applicant submits that FIG. 1 does show the timer being coupled to the renderer, as the term "coupled" may include intervening elements. Applicant therefore submits that no correction is needed to FIG. 1, and withdrawal of the objection to FIG. 1 is requested.

Rejections under 35 U.S.C. § 103(a)

Claim 4 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. US 2002/0154777 (*Candalore*) in view of U.S. Patent No. 6,910,221 (*Honda*) and further in view of U.S. Patent No. 5,659,617 (*Fischer*).

Candalore describes a system wherein a satellite TV receiver can include a GPS receiver. The GPS receiver receives GPS location data as well as a time stamp for reception of the data. The use of the time stamp allows the sender of a digital TV signal to check if the GPS signal is current (thus indicating the current location of the receiver), or a copy (or spoofed version) of a GPS signal, incorrectly indicating the location of the receiver.

Honda describes a moving-image communication evaluation system and moving image communication evaluation method in which a response time measurement section 50

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measures the response time between a moving image request, initiated at section 11 in cooperation with operation section 23, the request being sent to a communication terminal 30 via a network 10, and the displaying of the requested moving image on a moving image display section 12.

Fischer discloses a method for providing location certificates, in which a location certification unit (LCU) includes a position determination unit (PDU) which "includes conventional position determining apparatus for receiving Loran and/or GPS signals and for computing its position" (col. 2, line 52 to col. 3, line 1).

Claim 4 recites, inter alia, a verifier for determining an authorization to process protected material, based on one or more responses to one or more requests," "a timer for measuring response times associated with the one or more responses to the one or more requests," "the verifier determines the authorization based at least in part on an assessment of the response times", and "the response times are correlated to a physical proximity between the verifier and a first source of the one or more requests, and between the verifier and a second source of the one or more requests."

As described above, while Candalore describes the use of time-stamped GPS signals, Candalore does not describe all of the features of claim 4. For example, Candalore does not describe "a timer for measuring response times associated with the one or more responses to the one or more requests." Nor does Candalore describe "the response times are correlated to a physical proximity between the verifier and a first source of the one or more requests, and between the verifier and a second source of the one or more requests."

Neither Honda nor Fischer make up for the shortcomings of Candalore , as Honda merely describes a response time measurement section 50 that measures the response time between a moving image request, and Fischer merely describes providing location

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certificates, in which a location certification unit (LCU) includes a position determination unit (PDU) which "includes conventional position determining apparatus for receiving Loran and/or GPS signals and for computing its position" (col. 2, line 52 to col. 3, line 1).

Claim 5 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Candalore, in view of Honda, in view of Ficsher and further in view of U.S. Patent Publication No. US 2002/0069281 (Dillenberger).

Similarly to claim 4, discussed above, claim 5 recites "the verifier determines the authorization based at least in part on an assessment of the response times, and wherein the assessment of the response times forms an assessment of whether the one or more responses were communicated locally to the verifier or via a network connection."

As described above, the Candalore-Honda-Fischer does not describe such a feature.

Dillenberger describes a system that collects performance related metrics, including response times, but does not make up for the shortcomings of the Candalore-Honda-Fischer combination.

Claims 7 and 9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,785,815 (Serret-Avila) in view of Honda and further in view of U.S. Patent No. 4,924,378 (Hershey).

Serret-Avila describes methods and systems for encoding and protecting data using digital signature and watermarking techniques, which includes a renderer for rendering a selected data item out of a plurality of data items corresponding to a data set as presented on a CD or DVD. In addition, the Serret-Avila system includes "a signature verification engine for verifying the integrity of a portion of the electronic file using a digital signature..."

Hershey describes a license management system and license storage key in which an application program to be run on a computer must be assigned a license in the license storage key associated with the computer before it is permitted to run. In particular, the computer on which the application program is to be run requests a license for the application program. The license storage key then searches for the appropriate license and responds to the computer when the license is found. As indicated at col. 5, lines 27-36, the computer includes a timer for enabling the computer to keep track of responses for which it is waiting. If a response is not received within the time set by the timer, then an error is sent to the computer.

Claim 7 recites, *inter alia*, "a renderer for receiving a plurality of data items corresponding to a data set, and for producing therefrom a rendering corresponding to a selected data item," "a verifier, operably coupled to the renderer, for precluding the rendering corresponding to the selected data item in dependence upon whether other data items of the plurality of data items are available to the renderer", "a timer, operably coupled to the verifier and the renderer, for measuring response times associated with responses to requests for the other data items from the renderer," and "wherein the verifier precludes the rendering based at least in part on an assessment of the response times."

The Examiner contends that the "renderer" as claimed in claim 7 is found in *Serret-Avila*, and indicates, with reference to the Abstract, lines 5-11, and col. 3, lines 29-46, that the "verifier" as claimed in claim 7 is also found in *Serret-Avila*, and indicates col. 3, lines 29-36, i.e., the Examiner believes that the signature verification engine is equivalent to the "verifier" as claimed, and that the "timer" as claimed in claim 7 is found in *Honda*, and indicates col. 3, lines 35-67, col. 4, lines 1-67, col. 9, lines 1-67 and col. 10, lines 1-67, i.e., the response time measurement section 50 is equivalent to the "timer" as claimed.

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It should be noted that the Examiner acknowledges that the combination of *Serret-Avila* and *Honda* does not describe the limitation "wherein the verifier precludes the rendering based at least in part on an assessment of the response times." However, the Examiner contends that *Hershey* describes "a timer is set in the operating system of the work station to keep track of responses it is waiting for, and based on comparison between response time and the time is set by timer the verifier determines that it is valid request or not."

As indicated in MPEP §2143.01, "Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art." Further, "The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

Applicant submits that the Examiner is mistaken. In particular, while *Serret-Avila* includes a form of a verifier, the signature verification engine of *Serret-Avila* does not preclude "the rendering corresponding to the selected data item in dependence upon whether other data items of the plurality of data items are available to the renderer," as claimed in claim 7. Rather, the signature verification engine of *Serret-Avila* checks whether the selected data set includes the digital signature (Abstract lines 10-13).

Further, applicant submits that there is no motivation or suggestion in the references for combining *Honda* with *Serret-Avila* in that the signature verification engine of *Serret-Avila* does not establish the validity of the electronic data based on time but rather on the presence of a particular digital signature. Hence, there is no suggestion or motivation for including a response time measurement function in the system of *Serret-Avila* while *Hershey*

includes a timer which measures the response time of requests for a license, and which sends an error message when a response time exceeds a predetermined limit, this error message prevent a computer from using an operating program. There is no teaching that the operating program is a selected data item from a plurality of data items in a data set. Rather, in *Hershey*, the data set is the library of licenses, and the desired operating program identifies a license hopefully included in the library of licenses.

Further, applicant submits that *Hershey* does not provide any suggestion or motivation for inclusion of the timer function therein into the response time measurement section of *Honda*, and the inclusion of this combination into *Serret-Avila*.

Claim 9 depends from claim 7, and further narrows and defines that claim, that has been discussed above and is believed to be allowable over the proposed *Serret-Avila-Honda-Hershey* combination. Accordingly, for at least these reasons, claim 9 is deemed to distinguish patentably over the proposed *Serret-Avila-Honda-Hershey* combination.

Claim 6 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over *Hershey* in view of *Fischer*.

Claim 6 is patentable over any *Hershey-Fischer* combination, at least for the reasons described above with respect to claims 4 and 5, as claim 6 recites "the verifier determines the authorization based at least in part on an assessment of the response times, and wherein the assessment of the response times forms an assessment of whether the one or more responses were immediately available, or whether the one or more responses were a result of a determination," which is not taught or suggested by the proposed combination of references.

Claim 10 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over a proposed hypothetical *Serret-Avila-Honda-Hershey* combination in view of U.S. Patent No. 6,496,802 (*van Zoest*).

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Claim 10 depends from claim 7, and further narrows and defines that claim, that has been discussed above and is believed to be allowable over the proposed *Serret-Avila-Honda-Hershey* combination.

Van Zoest describes a verification server system, but does not make up for the shortcomings of the proposed *Serret-Avila-Honda-Hershey* combination. Accordingly, for at least these reasons, claim 9 is deemed to distinguish patentably over the proposed *Serret-Avila-Honda-Hershey-van Zoest* combination.

Claim 8 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over a proposed hypothetical *Serret-Avila-Honda-Hershey* combination in view of U.S. Patent No. 6,954,786 (*Vered*).

Vered describes a system that determines locations of data items, but does not make up for the shortcomings of the proposed *Serret-Avila-Honda-Hershey* combination. Accordingly, for at least these reasons, claim 9 is deemed to distinguish patentably over the proposed *Serret-Avila-Honda-Hershey-Vered* combination.

Moreover, while, in defense of the proposed hypothetical combinations proposed in the Office Action, the Examiner contends that the cited references are in analogous arts to that of the claimed invention, applicant notes that a proper test for combining references is, as described above, that there be "some teaching, suggestion, or motivation" for the combination. Applicant submits that the Examiner has not pointed to any such "teaching, suggestion, or motivation" for the cited combinations, especially when the teachings of the various references, as described herein, appear to teach away from the claimed invention.

In addition, applicant respectfully submits that the Examiner's assertions that it would be proper to combine the cited references in the proposed combinations are improper because they go far beyond the teachings of the references, and are improper hindsight

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reconstructions which pick and choose from features of the prior art using the claimed invention itself as a template. The Court of Appeals for the Federal Circuit explicitly prohibits such an approach, in upholding the validity of a patent challenged in a lawsuit the Court stated: "Care must be taken to avoid hindsight reconstruction by using the patent in suit as a guide through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claims in suit." *Grain Processing Corp. v. American Maize-Products Co.*, 840 F.2d 902, 907 (Fed. Cir. 1988) (citing *Orthopedic Equip. Co. v. United States*, 702 F.2d 1005, 1012, 217 USPQ 193, 199 (Fed. Cir. 1983).

Thus, applicants submit that each of the claims of the present application are patentable over each of the references of record, either taken alone, or in any proposed hypothetical combination. Accordingly, withdrawal of the rejections to the claims is respectfully requested.

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Conclusion

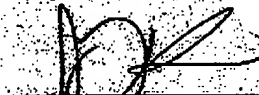   In view of the above remarks, reconsideration and allowance of the present application is respectfully requested.

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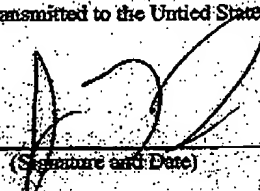Briarcliff Manor, NY 10510-8001
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